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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. JAHSHA COAKLEY, Defendant and Appellant.	B231522 (Los Angeles County Super. Ct. No. PA065716)

APPEAL from a judgment of the Superior Court of Los Angeles County. Michael J. O'Gara, Judge. Affirmed as modified.

Sally Patrone Brajevich, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Steven D. Matthews and David F. Glassman, Deputy Attorneys General, for Plaintiff and Respondent.

* * * * * *

Appellant Jahsha Coakley, appeals from a judgment of conviction entered after a jury found him guilty of three counts of second degree robbery (Pen. Code, § 211).[1] The jury also found true the allegations that as to counts 1 and 2, a principal was armed within the meaning of section 12022, subdivision (a)(1), and as to count 3, appellant personally used a firearm (§§ 12022.53, subd. (b), 12022.5, subd. (a)). The trial court sentenced appellant to a prison term of 13 years and four months.

Appellant contends that his conviction must be reversed because of judicial misconduct during a pretrial proceeding which tainted his subsequent trial. He contends he was deprived of a fair trial due to juror misconduct involving one juror sleeping during the proceedings, and some jurors deliberating outside the presence of the entire jury. Appellant also contends that he was prevented from accepting a package deal plea bargain because his codefendant refused to accept the deal. Finally, he contends that the order to pay attorney fees must be stricken because he did not receive notice and a hearing on the matter.

We agree that the attorney fees order must be stricken but otherwise affirm the judgment.

FACTS

Prosecution Evidence

Between 1:00 and 1:30 p.m. on November 9, 2009, Rasheed Tokunboh Alabi[2] entered S & G Recycling Center (S & G) in Sylmar. Alabi, whose face was partially covered, pointed a silver-colored handgun at S & G employee Francisco Gonzalez and demanded money. Gonzalez said he did not have any money. Alabi then pointed the gun at S & G owner, Sandra Velasquez and repeated his demand for money. Velasquez handed him approximately $500, consisting mostly of one and five-dollar bills. Alabi

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[1] All further statutory references are to the Penal Code unless otherwise stated.

[2] Alabi was charged and tried with appellant. The jury was unable to reach a unanimous verdict as to Alabi and the court declared a mistrial in his case.

grabbed the money and took off running. He jumped over a barrier by the exit and got into a white Mercedes-Benz. Velasquez went to the front door and saw that the driver of the Mercedes was wearing a camouflage shirt. S & G employee Santos Lucio Ortiz was standing on top of a large container that stored recycled glass. He saw that the driver of the white Mercedes was male and wore a camouflage shirt. He observed a partial license plate number, "4DE."

At about 2:30 that afternoon, appellant entered the California Recycling Center in Sylmar. He wore a dark blue shirt with a collar. He obtained a receipt for recycling materials and presented it to employee Isidro Gonzalez Martinez.[3] When Martinez opened the cash register appellant displayed a revolver and demanded money. Appellant reached into the cash register which contained approximately $100 in one-dollar bills and took the money. Martinez gave him an envelope containing an additional $400 that he had in his pocket. Appellant's face was not covered during the robbery. Martinez saw appellant get into a white Mercedes and drive away.

At approximately 2:40 p.m., Los Angeles Police Department (LAPD) Officer Paul Prevost was on patrol duty in the general area of the robberies and responded to a radio call advising him of the robbery at the California Recycling Center. Martinez provided a description of the robber and the white Mercedes vehicle used in the robbery. Officer Prevost was aware of the earlier robbery at S & G involving a white Mercedes and communicated the information to the LAPD air support division.

Officer Mark Burdine, a tactical flight officer for LAPD's air support division, was in a helicopter in the vicinity of the robberies. From the air, he saw a white Mercedes matching the description of the suspect's vehicle pull into a Shell gas station approximately one quarter of a mile from the California Recycling Center. He directed the officers on the ground to the gas station. From the air he observed a male, later

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[3] This witness is also referred to in the record as "Gonzalez," not out of disrespect but to avoid confusion with S & G employee Gonzalez, we will refer to him as Martinez.

identified as Alabi, exit the vehicle. Alabi disappeared from his view for a moment and then was seen crossing the street and walking away from the gas station.

Officer Prevost and his partner arrived at the gas station and saw a white Mercedes with two occupants. The license plate was 4DEE121. Alabi who had been standing by the vending machines walked away. The white Mercedes was registered to appellant who was in the driver's seat and wearing a blue shirt. Appellant was taken into custody and the police recovered $442 from his pants and shoes. All but $40 consisted of one and five-dollar bills. Jamel Chatters, who was seated in the front passenger seat of the white Mercedes, was also taken into custody. A camouflage T-shirt was recovered from the trunk of the car. The officers found a loaded chrome steel revolver wrapped in a black ski mask between two vending machines where Alabi had been standing. Alabi was apprehended in a nearby alley and had $302 in his right front pocket consisting of 22 ten-dollar bills, one five-dollar bill, and 77 one-dollar bills.

Martinez positively identified appellant in a field lineup at the Shell gas station as the person who had robbed him at gunpoint at the California Recycling Center. Appellant was wearing the same clothes that he was wearing approximately half an hour earlier during the robbery.

Chatters testified at trial that he knew appellant. He testified that he was in the car for 10 minutes with appellant only, before stopping at the gas station. He testified that appellant was not involved in any robberies while he was with him on the day in question. In a pretrial recorded statement to the police which was played for the jury, Chatters stated that Alabi was also in the car, and that appellant and Alabi discussed robbing a "can place."

Defense Evidence

No evidence was presented on behalf of appellant.

DISCUSSION

I. Judicial Misconduct

A. Contention

Appellant contends that the convictions should be reversed because he was prejudiced by the remarks made by the trial court judge prior to his recusal. He contends that the appointment of a different judge who oversaw the proceedings was not an adequate remedy.

B. Background

Appellant and codefendant Alabi's case was assigned to Judge Harvey Giss for trial. An unrecorded pretrial discussion with counsel regarding a plea agreement took place in the courtroom. Judge Giss perceived that counsel wished him to intercede and explain the benefits of the plea offer to the defendants. When it became clear that a disposition could not be worked out Judge Giss made a remark to counsel to the effect that the only thing that would make the defendants plead was for the judge to come out in a white sheet and pointy hat.[4] Judge Giss declared a mistrial and recused himself.[5] The case was transferred to the Honorable Michael J. O'Gara who presided over the trial.

C. Analysis

"'A fair trial in a fair tribunal is a basic requirement of due process,'" and "'the Due Process Clause guarantees a criminal defendant the right to a fair and impartial judge.'" (*People v. Freeman* (2010) 47 Cal.4th 993, 1000.) Judicial bias must be raised at the "'"earliest practicable opportunity"'" and cannot be raised for the first time on appeal. (*People v. Guerra* (2006) 37 Cal.4th 1067, 1111, disapproved on another point in *People v. Rundle* (2008) 43 Cal.4th 76, 151.) "[D]efendant's willingness to let the entire trial pass without [a] charge of bias against the judge not only forfeits his claims on

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[4] During an in-chambers discussion with counsel, Judge Giss recollected the remark to be "I guess the only thing that could make them plead is to have the judge come out in a white sheet, and that's not going to happen." The actual remark was not recorded.

[5] The Commission on Judicial Performance determined that Judge Giss's remark constituted misconduct and he was publicly admonished.

appeal but also strongly suggests they are without merit. [Citation.]" (*People v. Guerra, supra,* at p. 1112.)

Appellant's contention that a "hostile courtroom" existed and that Judge O'Gara's handling of the matter was an inadequate remedy is essentially a claim of judicial bias, which was forfeited for failure to raise it below. (*People v. Farley* (2009) 46 Cal.4th 1053, 1110.) In any event, the claim lacks merit.

Appellant acknowledges that Judge Giss declared a mistrial and the case proceeded before a different judge but contends that the "racist remarks set the tone for [the] proceedings." Appellant devotes 10 pages of his opening brief revisiting the proceedings involving Judge Giss, and setting forth the trial court's requirement to avoid the appearance of bias but fails to identify even one occurrence during the trial before Judge O'Gara that supports his claim.

Appellant's claim is rejected because he fails to set forth any facts necessary to establish by an objective standard the bias and prejudice he alleges existed in his trial. (*People v. Chatman* (2006) 38 Cal.4th 344, 363.)

II. Juror Misconduct

A. Contentions

Appellant contends that his convictions must be reversed because of juror misconduct. He contends the court erred in denying his motions for mistrial when a number of jurors discussed the case outside the presence of the entire jury. Appellant also contends the trial court violated his constitutional rights to due process and a fair trial by failing to remove a juror who fell asleep during the proceedings. We find no merit to these contentions.

B. Deliberations Outside the Jury Room

1. Factual Background

The jury coordinator informed the court that during the lunch hour she observed two jurors in the jury assembly room "discussing aspects of evidence of the case and testimony." The jurors' conversation lasted 15 to 20 minutes. Several other jurors were

in the room listening while the remainder of the jury were out in the hallway. The two jurors appeared to be discussing what happened at the gas station, where the gun was located, how many people were involved in the crimes or were just driving the car, and if someone jumped a wall, where that might have occurred. The other jurors in the room made casual comments. The court asked the jury coordinator if it appeared that any of the jurors had resolved the issues they were discussing. The coordinator responded "one of them did say that in that person's mind, it appeared to make it clearer what their decision [was] going to be."

The court convened the entire jury and admonished them that they "must discuss the case only in the jury room, and only when all jurors are present." Six jurors were identified as having been present during the assembly room conversation. The court again admonished the entire jury that even if issues were constantly on their mind, they were not to discuss the case when they got together for lunch or at any time other than when all 12 were together for deliberations. The jury was sent back to continue deliberations.

Defense counsel moved for a mistrial which the court denied. The court acknowledged its concern but stated it did not believe there was any intentional misconduct on the part of the jurors. The court did not believe the jury was swayed by the discussions that had allegedly taken place because the jurors had continued to deliberate afterwards for an additional two hours and the questions subsequently submitted by the jury were unrelated to the issues allegedly discussed. Following further discussion with counsel the court stated that it would consider the matter during the evening recess.

The following morning the court informed counsel that having researched the issue he wanted to focus on the conduct of the jurors but was concerned about making inquiries into the jurors' mental processes. He stated that he intended to identify the individual jurors for the record, and then instruct them that they must disregard the discussion that took place outside the jury deliberation room and not let it influence them in any way and that discussions must take place, if needed, in the jury deliberation room

with all 12 jurors present. If all jurors agreed, he intended to have them continue deliberations. Following further argument by counsel the court agreed that the juror discussion was "inappropriate and certainly misconduct" but stated that the jury would be able to follow the specific instructions he proposed regarding the incident and would be able to perform their duty.

The jury entered the courtroom and was admonished again to deliberate only in the deliberation room when all 12 were present. Addressing the jurors who participated in the improper discussions, the court ordered them to disregard the discussions and not to allow their deliberations to be influenced in any way by those discussions. The court asked if this order posed a problem for anyone in that group of jurors. None of the jurors stated that they would have difficulty following the court's order and they were sent back to resume deliberations.

The following morning, the court informed the parties that one of the jurors had become ill and was hospitalized. When the jury assembled in the courtroom the alternate was seated and the newly constituted jury was instructed to begin its deliberations anew. (§ 1089; CALCRIM No. 3575.)[6] The jury began deliberations and reached a verdict in appellant's case that afternoon. The jury continued to deliberate throughout the following day in codefendant Alabi's case until they declared a deadlock.

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[6] The jury was instructed with CALCRIM No. 3575 as follows: "One of your fellow jurors has been excused, and an alternate juror has been selected to join the jury. [¶] Do not consider this substitution for any purpose. [¶] The alternate juror must participate fully in the deliberations that lead to any verdict. The People and the defendants have the right to a verdict reached only after full participation of the jurors whose votes determine that verdict. This right will only be assured if you begin your deliberations again, from the beginning. Therefore, you must set aside and disregard all past deliberations and begin your deliberations all over again. Each of you must disregard the earlier deliberations and decide this case as if those earlier deliberations had not taken place. [¶] Now, please return to the jury room and start your deliberations from the beginning."

2. Applicable Legal Principles

Generally speaking, "we use the deferential abuse of discretion standard to review a trial court ruling denying a mistrial." (*People v. Silva* (2001) 25 Cal.4th 345, 372.) As more specifically pertinent to jury misconduct claims, we employ a two-prong review standard. "We accept the trial court's credibility determinations and findings on questions of historical fact if supported by substantial evidence." (*People v. Nesler* (1997) 16 Cal.4th 561, 582.) "Whether prejudice arose from juror misconduct, however, is a mixed question of law and fact subject to an appellate court's independent determination." (*Ibid.*)

In *In re Hamilton* (1999) 20 Cal.4th 273, the California Supreme Court held that "[a]ny presumption of prejudice is rebutted, and the verdict will not be disturbed, if the entire record in the particular case, including the nature of the misconduct or other event, and the surrounding circumstances, indicates there is no reasonable probability of prejudice, i.e., no *substantial likelihood* that one or more jurors were actually biased against the defendant." (*Id.* at p. 296.)

In so holding, the high court explained that "[t]he standard is a pragmatic one, mindful of the 'day-to-day realities of courtroom life' [citation] and of society's strong competing interest in the stability of criminal verdicts [citations]. It is 'virtually impossible to shield jurors from every contact or influence that might theoretically affect their vote.' [Citation.] Moreover, the jury is a 'fundamentally human' institution; the unavoidable fact that jurors bring diverse backgrounds, philosophies, and personalities into the jury room is both the strength and the weakness of the institution. [Citation.] '[T]he criminal justice system must not be rendered impotent in quest of an ever-elusive perfection. . . . [Jurors] are imbued with human frailties as well as virtues. If the system is to function at all, we must tolerate a certain amount of imperfection short of actual bias.'" (*In re Hamilton, supra*, 20 Cal.4th at p. 296.)

3. Analysis

We agree with the trial court's interpretation of the jurors' discussions as "inappropriate and certainly misconduct" and a rebuttable presumption of prejudice arose

as a result of that misconduct. (*People v. Tafoya* (2007) 42 Cal.4th 147, 192.) We independently conclude, based on a review of the entire record and the totality of the circumstances, that the presumption of prejudice was rebutted.

Here, the trial court convened the jurors and immediately admonished them when the matter was brought to the court's attention. Mindful of the danger of inquiring into the jurors' deliberative process, the court did not determine it necessary to question the jurors individually regarding the allegations as it had been informed of the general nature of the discussions by the jury administrator. In discussing with counsel the characteristics of groups of people gathered together, the court echoed the Supreme Court's reasoning in *In re Hamilton*. (*In re Hamilton, supra,* 20 Cal.4th at p. 296.) The court took into account that the weather conditions forced the jurors to stay in the building all day and that "similar to working colleagues discussing work over their lunch hour, here we had our jurors still in the courthouse, the place that they're used to being involved in this trial."

The court was influenced by the amount of time all of the jurors spent deliberating after the earlier improper discussion and that the subsequent questions asked by the jury were unrelated to the issues that were allegedly discussed. While the court was concerned that the jurors may have discussed issues related to the case it was not convinced that the ultimate issue of guilt or innocence was discussed, much less a decision reached.

The court was confident the jury could follow its clear order to disregard any prior discussions that had taken place outside the presence of all jurors. On this record the court's investigation into the juror misconduct provided "ample basis for determining whether [the jurors] could fulfill their obligations as jurors. No more was required." (*People v. Farnam* (2002) 28 Cal.4th 107, 141.)

Nor are we persuaded by appellant's contention that the jury was prejudiced against him because it reached its verdict in two hours. Appellant "suggests" that the jury did not follow the court's instruction to begin deliberations anew when the alternate juror was seated. There is no requirement that a jury must deliberate for a particular length of

time before reaching its verdict. We find appellant's contention, based upon the length of deliberations, to be without merit. (*Mendoza v. Club Car, Inc.* (2000) 81 Cal.App.4th 287, 309.)

C. Sleeping Jurors

1. Factual Background

During a break in the testimony of the first witness in the case, the trial court advised the parties that Juror No. 55 appeared to be sleeping. The juror seemed aware that the court was looking at her and appeared to try and stay awake thereafter. The court advised the parties that if her behavior continued he would address the issue. The trial continued for the remainder of that day without further incident.

At the conclusion of the following day's testimony the court remarked that Juror No. 55 "seemed to be nodding off" and that it was "potentially becoming a problem that we need to nip in the bud."

When testimony concluded on the third day of trial the court invited counsel to discuss the options available to him in the event he decided to remove Juror No. 55. He stated that he could not tell when she was looking down whether she was taking notes or if she had nodded off. The prosecutor observed Juror No. 55 closing her eyes and remarked that "it's been happening for one or two seconds." Counsel for codefendant Alabi did not know if the juror was sleeping or had "lazy eye" movement and head movement. He suggested an admonishment that would remind all the jurors to stay alert while taking notes.

After proceedings were adjourned the following day the trial court remarked that he thought Juror No. 55 was sleeping during the direct testimony of a witness. Neither the prosecution nor defense counsel commented on the court's observations. The court noted that Juror No. 55 was not sleeping during cross-examination but stated that he had an obligation to make inquiries.

The following day, the court conducted a hearing in the presence of counsel. Addressing Juror No. 55, the court stated that it was concerned that she was not "watching and catching all the relevant testimony" because it appeared that she was

having trouble staying awake. Juror No. 55 assured the court that she was "catching all the information" and offered to show the court that she had taken notes during the testimony. Following a discussion regarding the juror's work schedule the court again expressed its concern that she may have missed some important information. Juror No. 55 responded "No. I can tell you what happened."

A sidebar exchange took place during which appellant's counsel stated that he "had a problem with the court's characterization of her sleeping." He stated that he had been watching her closely since her alleged sleeping had become an issue, and on a couple of occasions she was actually taking notes when he initially thought she was sleeping. The court stated that he too had seen her looking down and could not tell if she was taking notes. The prosecutor was concerned that Juror No. 55 appeared to be sleeping and asked that she be excused. Counsel for codefendant Alabi characterized the juror's behavior as "nodding off or falling asleep, as opposed to sleeping." The court agreed that she appeared to "nod[] off for a brief moment and then [wake] up." The court had noted the specific points where he had observed her "nodding off" and concluded that she had not been sleeping to the point that she had missed a "huge chunk" of information.

Juror No. 55 was told that everybody needed her to stay awake. She needed to "listen attentively to all the evidence so [she could] appropriately have a basis on which to deliberate." The court stated that it did not want this issue to come up again and it would be forced to take action if it did.

2. Applicable Legal Principles

The trial court has the authority to discharge jurors for good cause, including sleeping during trial. (*People v. Bradford* (1997) 15 Cal.4th 1229, 1348–1349 (*Bradford*).) When the trial court receives notice that such cause may exist, it has an affirmative obligation to investigate. (*Id.* at p. 1348.) Both the scope of any investigation and the ultimate decision whether to discharge a given juror are committed to the sound discretion of the trial court. (*Ibid.*)

3. Analysis

In *Bradford*, the Supreme Court found no abuse of discretion where the trial court failed to conduct any inquiry, despite evidence that a challenged juror had slept for a substantial portion of at least two trial days. Here, by contrast, an inquiry was conducted, based on observations that Juror No. 55 was "nodding off" and may have missed material portions of the trial. Neither the judge, nor counsel for the defense or prosecution, claimed to have observed the juror sleeping for any substantial period.

The court was obliged to look into the matter further because the juror's conduct continued over a number of days. The court's questioning of the attorneys and examination of Juror No. 55 satisfied its duty of inquiry. The court asked the juror about her drowsiness, the reasons for it, and whether she had missed important testimony. As far as the written record shows, the juror was not defensive or hostile in response to the court's questions but insistent that she had not missed any testimony and offered to show the court the notes that she had taken. Juror No. 55 gave every indication in her responses that she approached her duties as a juror conscientiously. The trial court was in the best position to observe the juror's demeanor on the witness stand. The trial continued for an additional 16 days of testimony without further observations or claims that Juror No. 55 was inattentive. The court was not required to interrogate Juror No. 55 more aggressively, or to expand the scope of the inquiry that would bring the trial to a halt. We find the hearing the court conducted was adequate under the circumstances, and that the court did not abuse its discretion by failing to discharge Juror No. 55.

Appellant's contention that additional jurors were sleeping is not supported by the record. Appellant contends that Juror No. 1 and Juror No. 10 also fell asleep. But it appears from the record that Juror No. 10 is the same person as Juror No. 55. The court first notes "Juror No. 55, seated in seat No. 10, appeared to be sleeping" and later states "Once again, Juror No. 10, I think No. 55 . . . ." The reference to Juror No. 1 "nodding off" came during a discussion with counsel and the court stated that he would "watch him." Finding no further reference to Juror No. 1 "nodding off" we find no abuse of discretion by the trial court.

III. Order to Pay Attorney Fees

A. Contention

As part of the judgment, the trial court ordered appellant to pay attorney fees of $8,265 pursuant to section 987.8. Appellant contends the trial court erred in imposing the fees without (1) a hearing, (2) a finding of an ability to pay, and (3) any support in the record. Respondent concedes that appellant's point is correct, but requests remand for a hearing.

B. Applicable Legal Principles

Section 987.8 provides that a court may order a defendant to reimburse the county for the cost of legal representation. The trial court, at the conclusion of the trial, and after notice and a hearing, must make a determination of the defendant's ability to pay all or a portion of the actual cost of his or her legal representation. (§ 987.8, subd. (b).) '"Proceedings to assess attorney's fees against a criminal defendant involve the taking of property, and therefore require due process of law, including notice and a hearing.'" (*People v. Smith* (2000) 81 Cal.App.4th 630, 637.)

Section 987.8, subdivision (e) provides that at the hearing the defendant must be afforded the opportunity to testify, to present witnesses and documentary evidence, and to cross-examine adverse witnesses. Moreover, subdivision (f) provides that prior to the time counsel is even appointed, "the court shall give notice to the defendant that the court may, after a hearing, make a determination of the present ability of the defendant to pay all or a portion of the cost of counsel. The court shall also give notice that, if the court determines that the defendant has the present ability, the court shall order him or her to pay all or a part of the cost." Under the statutory scheme, there is a presumption that a defendant sentenced to prison does *not* have the ability to reimburse defense fees. This presumption may be overcome, though, by proof of unusual circumstances. (§ 987, subd. (g)(2)(B).)

C. Analysis

We agree that the order requiring appellant to pay for his legal representation was in error. The record does not contain any indication that appellant was given notice of

the possibility he might be ordered to reimburse the cost of his legal representation before counsel was appointed. The reimbursement order was not supported by substantial evidence of appellant's ability to pay any amount, and the record shows the trial court did not conduct an on-the-record hearing to determine this issue. Furthermore, we have examined the sentencing transcript and find no reference to the reimbursement order.

We conclude there is insufficient evidence of appellant's ability to pay these fees, and no evidence that appellant was given proper notice. We therefore reverse the order regarding reimbursement of attorney fees.

Further, we conclude that remanding for a hearing on appellant's ability to pay, as respondent suggests, is inappropriate given the presumption that a defendant sentenced to state prison lacks a "reasonably discernible future financial ability to reimburse the costs of his or her defense" absent a finding of "unusual circumstances." (§ 987.8, subd. (g)(2)(B); see *People v. Lopez* (2005) 129 Cal.App.4th 1508, 1537 ["express finding of unusual circumstances [required] before ordering a state prisoner to reimburse his or her attorney"].) There is nothing in the record to suggest that the trial court could find unusual circumstances of the financial ability to satisfy the order of reimbursement.

The information in the record strongly points to the opposite conclusion—at the time of the crime appellant was living with his parents and attending school. His only source of income was his aunt who paid him for doing odd jobs around her daycare business. We therefore strike the attorney fee order without remand in the interest of judicial economy.

IV. Validity of Package Deal Plea Bargains

Appellant contends that his rights were violated when he was prevented from accepting a plea bargain offer because it was a package deal requiring the assent of both defendants, and codefendant Alabi refused the offer. Appellant contends that he should be allowed to change his plea and accept the offer previously offered by the prosecution. This claim is without merit.

The "package-deal" plea bargain is a "valuable tool" to the prosecutor who has " a need for *all* defendants, or none, to plead guilty." (*In re Ibarra* (1983) 34 Cal.3d 277, 289, fn. 5.) "The prosecutor may be properly interested in avoiding the time, delay and expense of trial of all the defendants. He is also placed in a difficult position should one defendant plead and another go to trial, because the defendant who pleads may become an adverse witness on behalf of his codefendant, free of jeopardy. Thus, the prosecutor's motivation for proposing a 'package-deal' bargain may be strictly legitimate and free of extrinsic forces." (*Ibid.*)

"It is not inherently wrong to offer package deals in cases involving multiple defendants. It is common knowledge that the district attorney's office usually does so. The drawback of not doing so and entering into plea bargains with less than all the codefendants is the risk of insufficient evidence to prove the case against the remaining codefendant(s). The risk results in some, or all, of the codefendants getting off lightly, or walking, including the major culprit in the offense. Accordingly, most package deals are all or nothing." (*People v. Pastrano* (1997) 52 Cal.App.4th 610, 617.)

While acknowledging the general legitimacy of package deals, appellant argues that he "was unable to accept the plea deal because the prosecution made the deal contingent on both defendant's (*sic*) accepting the deal, so appellant was prevented from exercising his will and entering into a plea bargain which offered a shorter sentence." Appellant essentially is arguing that it was unfair to force him to go to trial. But appellant ignores the fact that if a codefendant rejects the package offer, the People lose their expected benefit from the deal. (See *Liang v. Superior Court* (2002) 100 Cal.App.4th 1047, 1056–1057 [trial court properly vacated defendant's no contest plea when codefendants withdrew their pleas because one of the bargain's conditions had been voided. "Contrary to Liang's argument, by insisting on his right to the indicated sentence although his codefendants have withdrawn their guilty pleas, Liang is trying to receive the benefits of his bargain when an express reciprocal condition was voided. Moreover, Liang has not been deprived of any right to receive the indicated sentence. He only had that right if all three defendants agreed to plead guilty"].)

The cases cited by appellant involve situations in which a defendant who has accepted a package deal later argues that he was coerced into accepting the plea. They have no relevance to the issue raised on appeal. Likewise, appellant cites no authority for the proposition that he is entitled to a reversal of a valid conviction.

DISPOSITION

The judgment is modified to strike the order requiring appellant to pay attorney fees in the amount of $8,265 pursuant to section 987.8. The superior court is directed to prepare and forward to the Department of Corrections and Rehabilitation an amended abstract of judgment reflecting this modification. The judgment is affirmed in all other respects.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, Acting P. J.

DOI TODD

We concur:

_____, J.

ASHMANN-GERST

_____, J.

CHAVEZ